IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5060 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPN

Versus

WORKMEN OF RASHTRIYA GENERAL WORKS UNION

Appearance:

1. Special Civil Application No. 5060 of 1999

MRS VASAVDATTA BHATT for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

#. Heard Ms.Vasavadatta Bhatt, learned advocate appearing on behalf of the petitioner and Mr.P.H.Pathak, learned advocate appearing on behalf of the respondent workman.

#. The petitioner has challenged the award passed by the Industrial Tribunal, Bhavnagar in Reference [IT] Nos.99/1991 and 71/1997 dated 14th September, 1998. This Court has issued RULE and granted interim relief on 3rd April, 2000. The respondent workman has filed affidavit in reply which is on record.

#. The Industrial Tribunal has set aside the order of punishment dated 10th October, 1980 and 19th May, 1981 and granted benefit to the respondent workman. Learned advocate Ms.Vasavadatta Bhatt has submitted that the tribunal has committed gross error in compelling the petitioner Corporation to produce the papers of the departmental inquiry after period of five years. According to her submissions, as per the Standing Order No.197, the Corporation has to maintain the record for five years and therefore the Corporation is destroying the same as `not required'. Therefore, Corporation has not produced any inquiry papers before the Tribunal and in absence of the record, the tribunal has granted relief in favour of the respondent workman. Therefore, the tribunal has committed gross error in passing such award.

#. Learned advocate Mr.P.H.Pathak on behalf of the respondent workman has submitted that even according to the Standing Order No.197, the period of five years was not getting over because if the period is considered from the date of incident i.e. 10th October, 1980, period of five years was completing on 10th October, 1985. However, before expiry of five years, the industrial dispute was already raised by the respondent workman on 11th January, 1985. Therefore, the disputes was already raised by the respondent workman even before five years period come to an end. He also pointed out that looking to the record, in respect of the incident dated 21st May, 1980, punishment order came to be issued on 10th October, 1980 which was reviewed by the higher authority in order passed on 19th May, 1981. Thereafter, the respondent workman has filed departmental appeal against the said decision and that appeal was rejected on 24th June, 1983 by the appellate authority. He also pointed out that the appeal was dismissed on 24th June, 1984 and immediately the respondent workman has raised the industrial Dispute on 11th January, 1985. There was no delay in raising the industrial dispute and from the order of second appellate authority dated 24th June, 1983, five years was not completed even as per the standing order No.197 and therefore, the Corporation should have maintained the documents and relevant papers relating to the departmental inquiry upto five years from the date of order passed by the second appellate authority.

Therefore, when the respondent workman has submitted application before the tribunal calling upon the other side to produce the relevant record of the departmental inquiry and same has not been produced and therefore, the tribunal has rightly passed the award in absence of the record and there was no error committed by the tribunal.

#. I have considered submissions made learned advocates for the parties. The incident had occurred on 21st May, 1980 and chargesheet was served on 23rd July, 1980 and therefore, punishment was imposed against the respondent workman on 10th October, 1980. However, said punishment was reviewed by the higher authority and the order was passed on 19th May, 1981. Thereafter, the workman had approached the second appellate authority and that appeal was rejected on 24th June, 1983 and then, the respondent workman had raised dispute on 11th January, 1985. In view of this factual aspect of the matter, the term of five years was not over as per the Standing Order No.197 and therefore, it transpires from the record that record was not maintained by the Corporation and same was not produced by the petitioner Corporation though specific order was passed by the tribunal on application preferred by the respondent. Therefore, obviously the tribunal had no other option but in absence of the record, to pass the appropriate order granting relief in favour of the respondent workman. The respondent workman has challenged the legality and validity of the departmental inquiry and the findings thereof, for that, necessary documents in respect of the departmental inquiry was necessary, which was not produced by the Corporation as reflected from the award. Therefore, the tribunal has rightly passed the award in absence of the record which was not produced by the petitioner Corporation and the tribunal has not committed any error in passing the award and as such, no procedural irregularity or jurisdictional error committed by the tribunal which in any way, not require any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution and hence, there is no substance in the present petition and the same deserves rejection. Therefore, this petition is rejected accordingly.

#. Learned advocate Mr.Pathak on behalf of the respondent workman has submitted that implementation of the award has been stayed by this Court and therefore, some suitable directions may be issued on the petitioner Corporation to implement the award in question within some reasonable time. Considering request of the learned advocate Mr.Pathak, in view of this Court, since this Court has upheld the award in question, some directions

require for implementation of the award in question. Therefore, it is directed to the petitioner Corporation to implement the award in question and to pay necessary benefits available to the respondent workman as per the award within period of eight weeks from the date of receiving the copy of this order.

Rule discharged. Interim relief, if any, stands vacated. No order as to costs. Direct Service to the respondent is permitted.

Date : 7-3-2002 [H.K.Rathod, J.]

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